IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

WRIT PETITION NO. 878 OF 2003

PETITIONER

Dr. Smt. Sunita Sharma, W/o. Dr. Bhojraj Sharma, Aged about 40 years, Occupation Assistant Surgeon, R/o. Primary Health Center, Ramanujganj, District Sarguja (C.G.)

VERSUS

RESPONDENT

1. State of Chhattisgarh Through Secretary, Health and Family Welfare Department, DKS Bhawan, Raipur(C.G.)
2. Union of India, Through Secretary, Personnel Public Grievance and Pension Ministry, Personal and training Department, Loknayak Bhawan Khan Market, New Delhi, New Delhi
3. Director, Directorate of Health Services, Raipur (Chhattisgarh)
4. Chief Medical and Health Officer, Ambikapur, District Sarguja (Chhattisgarh)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTIONS OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS, PROHIBITION, AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS.

"RESPONDENT NO. 5 : State of Madhya Pradesh

Through : Secretary,

Health Services Department

Vallabh Bhawan, Bhopal (M.P.)"

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No.516/2003

Dr. Ashok Kumar Jain and Others
Vs.
State of Chhattisgarh and Others

W.P.No.174/2003
Dr. K.C. Meshram
Vs.
State of Chhattisgarh and Others

W.P.No.604/2003
Dr. Suresh Jain
Vs.
State of Chhattisgarh and Others

W.P.No.877/2003
Dr. Bhojraj Sharma
Vs.
State of Chhattisgarh and Others

W.P.No.878/2003
Dr. Smt. Sunita Sharma
Vs.
State of Chhattisgarh and Others

O R D E R

Post for 17.12.2003

Sd/-
Fakhruddin
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No.516/2003

Dr. Ashok Kumar Jain and Others

Vs.

State of Chhattisgarh and Others

O R D E R

Per Fakhruddin, J :

The order passed in this petition shall also govern the disposal of Writ Petitions No.174/2003 (Dr. K.C. Meshram vs. State of C.G. and Others), No.604/2003 (Dr. Suresh Jain vs. State of C.G. and Others), No.877/2003 (Dr. Bhojraj Sharma vs. State of C.G. and Others) and No.878/2003 (Dr. Smt. Sunita Sharma vs. State of C.G. and Others).

2. The petitioners are doctors. They are serving in the State of Chhattisgarh. It is not in dispute that they have been finally allocated to the State of Madhya Pradesh. They were directed to be relieved and were also directed to report to their respective places of posting. However, their relieving has been stayed and they have not been relieved so far.

3. The facts in brief of the cases are that the petitioners of W.P. No. 516/2003 are posted in Sarguja District. They have been allocated and transferred to Katni, Sidhi, Shadol, Datia

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and Shadol respectively vide order dated 19.10.2002 (Annexure P/3) passed by respondent No. 2. Their names are at Serial No. 94, 103, 108, 109 and 59. Vide order dated 26.10.2002 (Annexure P/4) passed by respondent No. 5, a direction was issued that they should be relieved and report to their respective places of posting. However, as per orders dated 28.10.2002 (Annexure P/1) passed by respondent No. 1 and dated 29.10.2002 (Annexure P/2) passed by respondent No. 5, their relieving has been stayed. The petitioners have prayed for quashing the orders Annexures P/1 and P/2. The petitioner of W.P. No. 174/2003 is posted at Jagdalpur. He has been allocated and transferred to Chindwara vide order dated 22.10.2002 (Annexure P/2) passed by respondent No. 2. His name is at Serial No. 7. Vide order dated 31.10.2002 (Annexure P/5) passed by respondent No. 1, a direction was issued that he should be relieved and report to his respective place of posting. However, he has not been relieved so far. He prays that respondent No. 1 be directed to relieve him. The petitioner of W.P. No. 604/2003 is posted at Sarguja. He has been allocated and transferred to Katni vide order dated 19.10.2002 (Annexure P/4). His name is at Serial No. 16. Vide order dated 25.10.2002 (Annexure P/5) passed by respondent No. 3, a direction was issued that he should be relieved and report to his

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respective place of posting. However, vide order dated 28.10.2002 (Annexure P/7) passed by respondent No. 2, his relieving has been stayed. He prays for quashing the order Annexure P/7. The petitioner of W.P. No. 877/2003 is posted at Sarguja. He has been allocated and transferred to Panna and relieved vide order dated 26.10.2002 (Annexure P/6) passed by respondent No. 4 with a direction to report to his respective place of posting before 31.10.2002. However, vide order dated 28.10.2002 (Annexure P/8) passed by respondent No. 3 and dated 29.10.2002 (Annexure P/9) passed by respondent No. 4, his relieving has been stayed. He prays for quashing the orders Annexures P/8 and P/9. The petitioner of W.P. No. 878/2003 is posted at Sarguja. She has been allocated and transferred to Rajgarh and relieved vide order dated 26.10.2002 (Annexure P/5) passed by respondent No. 4 with a direction to report to her place of posting before 31.10.2002. However, vide order dated 28.10.2002 (Annexure P/7) passed by respondent No. 3 and dated 29.10.2002 (Annexure P/8) passed by respondent No. 4, her relieving has been stayed. She prays for quashing the orders Annexures P/7 and P/8.

4. These matters came up for hearing on several dates. On 22.07.2003, the Advocate Generals of the States of Madhya Pradesh and Chhattisgarh appeared and Shri Ravindra

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Shrivastava, Advocate General for the State of Chhattisgarh, submitted that 254 posts of Assistant Surgeons are lying vacant. He further submitted that 229 Assistant Surgeons, who have been posted in Chhatisgarh, have been allocated to Madhya Pradesh and 131 Assistant Surgeons and 33 Specialists, in total 164, posted in Madhya Pradesh have been allocated to Chhattisgarh. It was submitted that if the State of Chhattisgarh relieves all 22 Assistant Surgeons to State of Madhya Pradesh, the vacancy of posts will be 483, as 254 posts are already lying vacant. It was further submitted that if all the officers are relieved, the health services in the State of Chhattisgarh will collapse. It was also submitted that in order to curb the shortage of government doctors, the State of Chhattisgarh had appointed doctors on contract basis for a period of one year. Out of 392 doctors recruited, 76 have not joined their duties. He also submitted that in the meantime the government is taking active steps to fill up the shortage by way of fresh appointments. It was also submitted that the representations of the petitioners have been considered. However, it has been decided not to relieve them in the larger public interest until their relievers come from Madhya Pradesh. It was also submitted that it would be desirable that the Secretaries of both the States may meet and resolve. Shri Vivek

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Tankha, Advocate General for the State of Madhya Pradesh, submitted that so far as the State of Madhya Pradesh is concerned, it has its own shortage. He however submitted that the Secretaries of both the States may meet and resolve. Both the Advocate Generals stated that they are trying to sort out the matter. It is submitted that certain meetings have been held but the matter could not be sorted out. The persons have been allocated. They ought to have been made available. It was stated that there was shortage of government doctors and the elections were going on, therefore, they could not be relieved. Now the elections are over, so they have to be relieved. The Central Government vide its letter dated 27.09.2002 also issued instructions in exercise of powers conferred under Section 68(3) of the M.P. Re-organization Act, 2000 and desired that last date for relieving the State service personnel to the State of Chhattisgarh is extended upto 31.10.2002. Inspite of this fact, the petitioners have not been relieved so far, though several opportunities have been granted to the State.

5. Learned counsel for the petitioners submitted that the State authorities have no jurisdiction to stay the transfer of the petitioners from State of Chhattisgar to State of M.P., as the decision has been taken by the Union of India under the provisions of Section 68(2) of the M.P. Reorganizaion Act, 2000.

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The State authorities cannot override or interfere in the order passed by the Union of India.

6. Section 68(2) of the M.P. Reorganization Act, 2000 is relevant and is quoted below:

> "68. Provisions relating to services in Madhya Pradesh and Chhattisgarh –
> (1) x x x x
> (2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect."

7. The respondents / State of Chhattisgarh have filed their return. It is submitted that the State of Chhattisgarh has decided to relieve the doctors allocated to the State of M.P. and posted in tribal areas of Chhattisgarh as soon as their relievers come from M.P. It is further submitted that the action of the State Government is humane and in the larger public interest.

8. In view of the legal position, the action of the State authorities in not relieving the petitioners cannot be sustained and the petitioners are entitled for relieving. A perusal of the return goes to show that neither the order passed by the Union of India nor the date of relieving is challenged by any government including the State of Chhattisgarh. Since the petitioners have been allocated and sufficient time has elapsed,

no justifiable ground has been made out to refuse the prayer of relieving of the petitioners.

9. Accordingly, the writ petitions are allowed with costs. It is directed that the petitioners be relieved forthwith.

10. Copy of this order be placed in the file of connected writ petitions.

Counsel fee as per scale.

Sd/-
Fakhruddin
Judge
17.12.2003

Hande/-